IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.194 OF 2006

IN

SUMMARY SUIT NO.2783 OF 2005

Veuve Clicquot Ponsardin ...Plaintiffs

v/s

Red Robin International ...Defendants

Mr S.C. Gupte with Ms Dipti Das i/b Ms Dunmor Sett for Plaintiffs.

Mr S. Patro with Mr N.K. Mudnaney for Defendants.

CORAM : D.K. DESHMUKH J.

DATE : 4TH OCTOBER 2006.

P.C. :-

1. The plaintiffs have filed this suit for recovery of the price of goods supplied by the plaintiffs to the defendants. At the outset, the learned counsel appearing for plaintiffs states that he restricts the suit claim to the amount which is mentioned in the invoice at Exh.'B' to the plaint. The case of the plaintiffs is that pursuant to the agreement at Exh.'A' to the plaint, the predecessor-in-title of the plaintiffs supplied to the defendants champagne and wine. The defendants also accepted the bill of exchange for the unpaid price of the goods. There were repeated demands made by the plaintiffs on the defendants to pay the unpaid price of the goods, but they were not replied. According to the ;plaintiffs, the plaintiffs thereafter issued a notice under the Indian Companies Act for winding up of the defendant Company. A company petition was also filed wherein an order was made for deposit of the amount by the defendants, the defendants did not deposit the amount. That order was challenged in appeal, there also the defendants failed but the amount was not deposited. The plaintiffs have therefore filed this suit. There are number of technical defences raised on behalf of the defendants. The first defence is that the assignment of the debt in favour of the

plaintiffs is contrary to clause 16 of the agreement between the parties. Perusal of clause 16 of the agreement however shows that it does not prevent supplier from transferring the debt. It casts an obligation on the defendants. The second objection that was raised was that the suit is based on the invoice at Exh.'B'. That invoice has been issued by the Clicquot Hong Kong, but the suit is filed by Clicquot Asia. Perusal of the invoice itself shows that the objection has no substance because the name of Clicquot Asia is also mentioned on the invoice. The third defence raised was that about certain adjustments made by the defendants as also interest claimed by the plaintiffs, but since the plaintiffs have restricted their claim to the amount mentioned in the invoice, it is not necessary to consider this defence. Then it was contended on behalf of the defendants that in the agreement, it is stated that this agreement is governed by French Law and Commercial Court of Reims will have exclusive jurisdiction. Admitted position is that the agreement on which the suit is based was signed at Mumbai and that the defendants carry on business in Mumbai. Therefore, in terms of clause 12 of the letter patent, this Court will have jurisdiction to entertain the suit. It does not appear that any part of cause of action has accrued in Reims in France. Therefore, there is no bar on the jurisdiction of this Court to entertain this suit.

2. Then it was claimed that the Commercial Court of Reims is an arbitration Court. Therefore, there is an arbitration clause between the parties and therefore, the suit is not maintainable. The submission is without any substance. It is clear from the provision of section 8 of the Arbitration and Conciliation Act 1996 that if according to the defendants, there is an arbitration clause between the parties, the remedy of the defendants is to apply to the Court for referring the parties to arbitration before filing any statement of claim. No such application has been made. Therefore, even assuming that there is arbitration clause between the parties, the jurisdiction of the Court will not be ousted.

3. It is submitted that the defendants were merely agents and the plaintiffs continued to be the owners of the goods and therefore, the defendants are not liable to pay price of the goods. However, it is an admitted position between the parties that the goods were supplied under the invoice at Exh.'B' which clearly mentions price of the goods and clearly states that the amount mentioned in the invoice is due for payment within 90 days from date of bill of lading. On receiving the goods, the plaintiffs, as according to the defendants, continued to be the owners of the goods till

the goods are sold by the defendants to the customer, the defendants ought not to have accepted the goods under the invoice at Exh.'B'. It is pertinent to note that the defendants have not given any explanation in the affidavit as to why they accepted the goods under the invoice which clearly stated that the liability of the defendants to pay the price is within 90 days of the receipt of goods without reference to the further sale of the goods by the defendants. It is clear that all the defences that have been raised by the defendants have no substance and they have been raised by them because they are not in a position to make payment. The plaintiffs were repeatedly writing letters to the defendants requesting them to make the payment, not a single letter has been replied to by the defendants. I thus find that the defendants do not have any defence to offer, therefore the defendants are not entitled to leave to defend the suit. On the contrary, the plaintiffs are entitled to receive the payment. Summons for judgment is therefore allowed, the defendants are directed to pay to the plaintiffs Euro 2,20,273/- with interest at the rate of 15 % p.a. from the date of institution of the suit till the date of realisation.

Refund of court fees as per rules.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as

true copy.

. Certified copy expedited.